Second, Congress has "evince[d] a decided preference for resolving interpretive issues by uniform administrative decision, rather than piecemeal through litigation." *Id.* at 568 (citations omitted). A court decision of the issue the Virachacks raise will necessarily operate retrospectively, *see Harper v. Virginia Dept. of Taxation*, 509 U.S. 86, 97 (1993), potentially subjecting many innocent car dealers to statutory damages of $500,000 or one percent of their net worth, 15 U.S.C. §1640(a)(2)(B). By contrast, the FRB can avoid this unfair imposition by providing any needed guidance or change through prospective adoption of an amendment to Regulation Z or by appropriate staff commentary.

IV. No Dire Consequences Will Flow From The Ninth Circuit's Decision

Attempting to stir the Court's sympathy or interest, the Virachacks repeatedly quote out of context the penultimate sentence of the majority opinion below, claiming that it will somehow "encourage the already-rampant deceptive practices of car dealers," "nullif[y] the core purpose of TILA," and set "an extremely dangerous precedent – allowing courts to decide paternalistically and after-the-fact that the consumer got a 'good deal' so there was no disclosure problem under TILA." Pet., 7, 9, 12, 18.

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that, over the contract term, will equal $2,000; (2) Disclose an initial fictional payment of $2,000 followed by 48 real monthly payments; (3) Increase the downpayment by a fictional $2,000; or (4) Reduce the cash price by $2,000 from the actual negotiated price. None of these alternatives is without its own difficulties and potential for misleading car buyers.

Nothing could be further from the truth. First, this case does not involve any deceptive practice. The Virachacks did not allege a claim for fraud or violation of California's Consumers Legal Remedies Act, which proscribes various specific unfair or deceptive acts or practices in the sale of goods, or the state's Unfair Competition Law, which bans "fraudulent" business practices generally. *See* Cal. Bus. & Prof. Code, §17200; Cal. Civ. Code, §1770. Those statutes and the common law of fraud will continue to provide car buyers ample remedies against car dealers who engage in deceptive practices. Those remedies are completely unaffected by the Ninth Circuit's decision in this case.

Instead, the issue here is only whether TILA requires a cash rebate forgone in favor of promotional rate financing to be disclosed as part of the finance charge and APR. Disclosure of the cash rebate in that manner will not prevent deceptive practices. Even the law review article that the Virachacks repeatedly cite states that more disclosure is not the way to halt deceptive practices:

> The typical response to seller control and abuse in this bargain market has been to propose more regulated disclosure. But more disclosure runs the risk of information-overload. . . . Critical buyer-oriented information is available, but most car buyers do not access and utilize available protective devices. And it remains speculative whether additional disclosure rules will significantly rework the market, making it more efficient and equitable.

Stephen A. Plass, *Bargain Avoidance in a Competitive Bargain Market: The Car Sales Conundrum*, 2 Wyo. L. Rev. 1, 8-9 (2002) (fns. omitted).

Second, the Ninth Circuit's majority opinion did not hold that the forgone cash rebate was not a "finance charge" for TILA purposes simply because the Virachacks got a "good deal." Instead, the opinion first determines that the forgone manufacturer's rebate is not a "finance charge" because the rebate was not paid or withheld to induce payment by means other than the use of credit. Pet. 7a-8a, citing 12 C.F.R. § 226.4(b)(9) & Supp. I, ¶ 4(b)(9).

The Ninth Circuit's majority opinion then correctly holds that the Virachacks' TILA claim is not aided by their assertion that they did not know about the alternative cash rebate and so never got to choose between the alternative forms of manufacturer's incentives available to them. Pet. 9a. The nature of the charges imposed determines whether they are finance charges for TILA purposes. If they are finance charges, they must be disclosed as such, whether the consumer holds a PhD in auto finance or is completely unknowledgeable in that respect. If they are not finance charges, they cannot be disclosed in that manner, again regardless of the consumer's knowledge or ignorance.

Solely with respect to the Virachacks' irrelevant plaint that they did not know they might have chosen a cash rebate, the Ninth Circuit majority opinion remarks:

> Compliance with the TILA did not require them to be informed to this extent. They got a good deal. Seeking to get a windfall, they cannot get more than the statute and its regulations afford them.

Pet. 9a.

Read in context, the "got a good deal" observation portends no earth-shaking consequences. Nor does this Court grant certiorari to edit five words from a Court of Appeals opinion that otherwise reaches the same result as all other published lower court decisions on a comparatively unimportant issue.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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